THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.26668 OF 2005

Dt.21.12.2005

Between:

Inti Hanumantha Rao … Petitioner

And

The Regional Joint Commissioner,

Endowment Department, Kakinada

And 2 others. … Respondents

ORDER:

Heard the learned counsel for the petitioner and the learned counsel on behalf of the respondents.

It is the case of the petitioner that he is a cultivating tenant of the 3rd respondent temple lands to an extent of Ac.4.21 cents by paying mukta regularly. It is stated that the property is located in S.No.10/1, 2 to an extent of Ac.2.56 cents, another bit of land in S.No.130/5 to an extent of Ac.0.92 and another bit is located in S.No.138/1 to an extent of Ac.0.73 cents and cultivating the said lands for the last 35 years. It is stated that though he was cultivating the land to an extent of Ac.4.21 cents, the Manager of the 3rd respondent issued Form-1 notice on 26.4.2003 in exercise of powers under Rule 5(1) of the A.P.Charitable and Hindu Religious Institutions Endowments Lease

of Agricultural Lands Rules, 2003 (for short 'the Rules') with a direction to handover possession of the lands leased out to the petitioner to an extent of Ac.6.76 cents situated at Venkatapuram within 30 days, other wise appropriate action will be taken against him under Sections 84, 85 and 86 of the A.P.Charitable and Hindu Religious Institutions and Endowments Act, 1987 (for short 'the Act'). As against the said notice, the petitioner filed W.P.No.10880 of 2003 to declare him as landless poor and the said writ petition was disposed of on 12.6.2003 directing the petitioner to approach the Assistant Commissioner, Endowments and file application to take decision. Pursuant to the said direction, the 2nd respondent issued notices to the petitioner on 25.7.2003 and 27.5.2004 directing him to attend for the enquiry on 3.12.2004. The petitioner attended the enquiry and contended that Section 82 of the Act is not applicable as the lease is subsisting in his favour. The said contentions have been rejected on the ground that the petitioner has converted the said lands as fish tanks and the he has also inducted one P.Ramulu, who is also a landless poor and, accordingly, the 2nd respondent by his order dated 13.12.2004 rejected the applications of the petitioner as well as P.Ramulu, cultivating tenants of Ac.6.76, 17.85 in R.S.Nos.100/1, 130/5 and 17.85 and accordingly the 3rd respondent is directed to resume the land after completion of current agricultural season duly collecting the rents and damages and arrears of Rs.13,500/- and 18 bags of baddy to the temple. As against the said order, the petitioner filed an appeal before the first respondent and the appellate authority also dismissed the appeal by order dated 8.8.2005 in Appeal No.177 of 2005. It is the contention of the petitioner before the appellate authority that as against the extent of Ac.6.76 cents he has surrendered Ac.4.26 cents and he has in possession of Ac.2.50 wet land only and therefore a person having Ac.2.50 shall be treated as landless poor as per explanation to Section 82(2) of the Act. The said contention has been rejected on the ground that as on the date of the notice, the petitioner was in possession of Ac.6.76 cents of wet land and even otherwise the

petitioner is making use to an extent of Ac.2.50 for fish tank and therefore the petitioner cannot be treated as landless poor.

Under Rule 9(c) of the Rules, the lessee shall utilize the land for agriculture purpose and only and he shall not utilize the said land for any non-agriculture or other purposes like residential or industrial or commercial purpose. The rearing of fish cannot be said as agricultural operation. Even otherwise, the petitioner cannot be treated as a landless poor as admittedly he was lessee in respect of an extent of Ac.6.76 and to get the benefit to declare him as landless poor for the first time he has raised the said contention before the appellate authority. Having regard to the facts and circumstances of the case, I am of the opinion that the appellate authority has rightly rejected the said contention and the lease granted in respect of agricultural lands stands automatically cancelled by virtue of Section 82 of the Act and the said lessee shall be deemed to have been an encroacher and without initiation of Section 83 of the Act, the petitioner is entitled to be evicted by following the procedure under Sections 84, 85 and 86 of the Act.

In view of the aforesaid facts and circumstances of the case, I do not see any merit in the writ petition. The writ petition is accordingly dismissed. No costs.

(V.ESWARAIAH, J.)

21.12.2005

kpr